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REMARKS

By this Amendment, claims 5, 14, 16 and 27-29 are canceled. Claims 1, 3, 6, 11, 12 and 15 are amended. No new claims are added and claims 7-10, 13 and 17-23 remain as originally filed. Claims 2, 4, 24-26 and 30-32 were previously withdrawn from consideration. As a result, claims 1, 3, 6-13, 15 and 17-23 remain pending in the application. Claims 1, 11 and 12 are amended to include patentable limitations. Claim 3 is amended to remove an unnecessary limitation, while claims 6 and 15 are amended to provide proper dependency.

Claim Rejections -- 35 U.S.C. §102

Pursuant to paragraphs 2-3 of the Office Action, claims 1, 3, 7-19, 21-23 and 27-29 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 6,856,748 (Elkins et al.). The Examiner asserts that Elkins et al. "shows an optical connection closure 20 having a base 24 and a cover 22 defining an interior cavity, a plurality of openings for receiving a portion of a distribution cable 30 within the cavity and a plurality of connector ports 32 on an external wall 34 for receiving an optical fiber of the distribution cable on the inside of the enclosure and for receiving pre-connectorized fiber optic drop cable such as 74 on the outside of the closure. ... The drop cable can be connected, disconnected or reconfigured without entering the closure. ... The distribution cable is received in a lengthwise direction and connector ports are so oriented that the drop cables extend away from the enclosure generally parallel to the distribution cable." See Office Action at pages 2-3.

Applicants respectfully traverse the rejection with respect to the rejected claims. Firstly, Applicants note that Elkins et al. was filed before, but did not publish or issue until *after* the filing date of the present application. As such, Elkins et al. is available as a prior art reference only under 35 U.S.C. §102(e), and not as a prior art reference under §102(b) as asserted by the Examiner. Secondly, each of the independent claims 1, 11 and 12 as amended herein contain at least one limitation which is not identically disclosed by Elkins et al.

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In particular, independent claim 1 now requires *at least one splice tray positioned within the interior cavity for splicing the optical fiber of the distribution cable to a pigtail to create a connectorized optical fiber that is routed to the at least one connector port on the inside of the closure*. In Elkins et al., the preterminated optical fiber 44 is either direct-terminated in the factory (see column 6 beginning at line 4 and Fig. 2a), or is spliced to an optical fiber pigtail in the factory (see column 7 beginning at line 10 and Fig. 2b) to produce a preterminated connector 40. In the factory-installed embodiment depicted in Fig. 2b, the optical fiber 44 and the pigtail may be placed in a *splice protector* 52 and secured by a *splice holder* 54 to the interior of the base or cover (see column 7, lines 53-60). However, the enclosure 20 cannot comprise a *splice tray* because the primary objectives of the Elkins et al. invention include providing an interconnection enclosure for a fiber optic distribution cable comprising at least one predetermined mid-span access location having at least one preterminated connector (i.e., pre-connectorized optical fiber) wherein the enclosure "eliminates the need for field splicing" and "eliminates the need for a field technician to have to open and enter the interior of the enclosure." Column 2, lines 30-35. Furthermore, the interconnection enclosure should have an overall outer diameter that is small enough to permit the distribution cable and the enclosure to be deployed over conventional sheave wheels and through relatively small diameter conduits. Accordingly as discussed at column 5, lines 64-66, "[p]referably, the enclosure 20 has a diameter just large enough to enclose the distribution cable, bend radius control means, optical fiber and sealing means." Thus, claim 1 is patentable as amended herein for at least these reasons.

Claims 11 and 14 have been combined such that independent claim 11 now requires *the preterminated optical fiber of the distribution cable is connectorized in the field*. As discussed above, Elkins et al. disclose an interconnection enclosure wherein at least one optical fiber of the distribution cable is *always* preterminated and connectorized *in the factory*. The optical fiber may be direct-terminated (Fig. 2a) or spliced to a pigtail (Fig. 2b), but the interconnection enclosure always comprises a preterminated optical connector 40 when the distribution cable 30

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is deployed in the field. In the event that the interconnection enclosure is field-installed, the one or more preterminated connectors 40 are encased by a protective heat shrink material 38 that is removed in the field. The larger-sized interconnection enclosure 20 is then positioned over the access point and the preterminated connectors 44 are routed to their respective connector ports 32 (see column 5, lines 40-49). Thus, claim 11 is patentable as amended herein for at least these reasons.

Claims 11 and 12 have been combined such that independent claim 12 now requires *the mid-span access location is field-prepared and the at least one optical fiber of the distribution cable is terminated and connectorized in the field*. As discussed above, Elkins et al. disclose an interconnection enclosure wherein the mid-span access location is *factory-prepared* and at least one optical fiber of the distribution cable is *always* preterminated and connectorized *in the factory*. The optical fiber may be direct-terminated (Fig. 2a) or spliced to a pigtail (Fig. 2b), but the interconnection enclosure always comprises a predetermined mid-span access location and a preterminated optical connector 40 when the distribution cable 30 is deployed in the field. In the event that the interconnection enclosure is field-installed, the one or more preterminated connectors 40 are encased by a protective heat shrink material 38 that is removed in the field. The larger-sized interconnection enclosure 20 is then positioned over the access point and the preterminated connectors 44 are routed to their respective connector ports 32 (see column 5, lines 40-49). Thus, claim 12 is patentable as amended herein for at least these reasons.

For at least the reasons stated above, Elkins et al. does not anticipate the invention of independent claims 1, 11 and 12. Claims 3 and 7-10 depend directly from patentable base claim 1, and thus are likewise allowable for at least the same reasons. Claims 15, 17-19 and 21-23 depend directly or indirectly from patentable base claim 11, and thus are likewise allowable for at least the same reasons. Claim 13 depends directly from patentable base claim 12, and thus is likewise allowable for at least the same reasons. Claims 14, 16 and 27-29 are canceled.

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Accordingly, Applicants respectfully request the Examiner to withdraw the rejection of claims 1, 3, 7-19, 21-23 and 27-29 under 35 U.S.C. 102(b) [sic: 102(e)].

Claim Rejections – 35 U.S.C. §103

Pursuant to paragraphs 4-5 of the Office Action, claims 5, 6 and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable (i.e., obvious) over Elkins et al. The Examiner asserts that Elkins et al. “shows all the features of these [the rejected] claims except a shelf with a splice tray inside the interior cavity for splicing the optical fibers of the distribution cable to a pigtail to create connectorized optical fibers.” However, the Examiner suggests such a feature is well known and widely used in the art of optical fiber connectors, and therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention “to provide such a feature because it would provide a means to [splice] optical fibers of the distribution cable to a pigtail to create connectorized optical fibers.”

Without comment as to the merits, Applicants traverse the rejection on the basis that Elkins et al. is unavailable as a prior art reference in a proper rejection under §103(a). Elkins et al. cannot form the basis of a proper obviousness rejection under 35 U.S.C. §103(a) because the subject matter of Elkins et al. and the presently claimed invention were, at the time the invention was made, subject to an obligation of assignment to the assignee of the present application. Pursuant to §103(c):

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

As discussed above, Elkins et al. is only available as a prior art reference under §102(e), and thus, is unavailable as a prior art reference in a proper rejection under §103(a). Furthermore, claim 5 is canceled. Claim 6 depends directly from patentable base claim 1 (as amended herein),

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and thus, is likewise patentable for at least the same reasons. Similarly, claim 20 depends directly from patentable base claim 11 (as amended herein), and thus, is likewise patentable for at least the same reasons. Accordingly, Applicants submit that the rejection is improper or is overcome for the reasons stated above, and respectfully request the Examiner to withdraw the rejection of claims 5, 6 and 20 under 35 U.S.C. §103(a).

As a result of the above amendments and remarks, Applicants submit that the pending claims 1, 3, 6-13, 15 and 17-23 are patentable and respectfully request the Examiner to issue a Notice of Allowability for the pending claims.

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CONCLUSION

This Amendment being timely submitted and fully responsive to the Office Action, Applicants submit that the application is now in condition for immediate allowance. The Amendment does not result in more independent or total claims than paid for previously (claim 12 is made independent, while independent claim 27 is canceled). Accordingly, no fee for excess claims is due. The Examiner is hereby authorized to charge any other fee due in connection with the filing of this response, including any fee for excess claims, to Deposit Account No. 19-2167. If an extension of time not already accounted for is required with this response, Applicants hereby petition for such extension of time and the Examiner is likewise authorized to charge the petition fee to Deposit Account No. 19-2167. Any overpayment should be credited to Deposit Account No. 19-2167.

Respectfully submitted,



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